

IN THE UNITED STATE DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
ex rel. [UNDER SEAL],	)	CIVIL ACTION No. 19-495
	)	
Plaintiff,	)	
	)	<b>FILED UNDER SEAL</b>
vs.	)	<b>PURSUANT TO</b>
	)	<b>31 U.S.C. § 3730(b)(2)</b>
[UNDER SEAL],	)	
	)	
Defendant.	)	

**UNDER SEAL**

**DO NOT PUT ON PACER**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
<i>ex rel.</i> , JONATHAN D’CUNHA, M.D.,	)	Civil Action No. 19-495
	)	
Plaintiff,	)	
	)	District Judge Cathy Bissoon
v.	)	
	)	
DR. JAMES D. LUKETICH,	)	
UNIVERSITY OF PITTSBURGH	)	
MEDICAL CENTER, AND	)	<b>FILED UNDER SEAL</b>
UNIVERSITY OF PITTSBURGH	)	<b>PURSUANT TO</b>
PHYSICIANS,	)	<b>31 U.S.C. § 3730(b)(2)</b>
	)	
Defendants.	)	

**THE GOVERNMENT'S NOTICE OF ELECTION TO INTERVENE  
IN PART AND TO DECLINE TO INTERVENE IN PART**

NOW COMES the United States of America, pursuant to the False Claims Act (“FCA”), 31 U.S.C. § 3730(b)(2) and (4), and in accordance with this Court’s prior Orders and the Local Rules of this Court, and notifies this Court of its decision to intervene in part of the instant action, and to decline to intervene in part of the same. More specifically, the United States notifies the Court of its decision to intervene on claims that Defendants violated the FCA by submitting materially false claims for payment to the Government for: a) “concurrent” surgeries performed by Defendant Luketich; b) Defendant Luketich’s physician service fees for those surgeries in which he did not participate in the key and critical portions of the procedure; c) Defendant Luketich’s physician service fees for those surgeries during which he was not “immediately available” to return to the procedure; d) medically unnecessary anesthesia billings and services resulting from Defendant Luketich’s “concurrent” surgery practice; and e) other medically unnecessary procedures and services resulting from Defendant Luketich’s “concurrent” surgery

practice. The United States declines to intervene on the remainder of the allegations and claims in Relator's Amended Complaint. The United States intends to file its Complaint in Partial Intervention on or before July 30, 2021.

Although the United States declines to intervene in a portion of the action, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows Relator to maintain the declined portion of the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* Therefore, the United States requests that, to the extent Relator or any Defendant propose that the declined portion of the action be dismissed, settled, or otherwise discontinued, the Court solicit the written consent of the United States before ruling on said request or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that – going forward – all pleadings filed in this action, even as to the declined portion of this action, be served upon the United States, and that all orders issued by the Court be sent to the United States' counsel. The United States also reserves its right to intervene – for good cause and at a later date – in any part of the action that is currently declining, as well as to seek the dismissal of the Relator's action or claim on any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and (e)(4).

Finally, the United States requests that Relator's Complaint and Amended Complaint, this Notice, and the attached proposed Order be unsealed. The United States requests that all other papers on file in this action remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

Respectfully submitted,

STEPHEN R. KAUFMAN  
Acting United States Attorney

/s/ Adam Fischer  
ADAM FISCHER (PA 314548)  
Assistant United States Attorney  
Joseph F. Weis, Jr. U.S. Courthouse  
700 Grant Street, Suite 4000  
Pittsburgh, Pennsylvania 15219  
Tel.: (412) 894-7431  
Fax: (412) 644-6995  
Email: [adam.fischer@usdoj.gov](mailto:adam.fischer@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of July, 2021, a true and correct copy of the foregoing United States' Notice of Election to Intervene in Part and to Decline to Intervene in Part was served via electronic and/or first-class mail upon the following:

Clark M. Sylvia, Esq.  
PHILLIPS & COHEN LLP  
100 The Embarcadero, Suite 300  
San Francisco, CA 94105

Amy L. Easton, Esq.  
PHILLIPS & COHEN LLP  
2000 Massachusetts Avenue, NW  
Washington, DC 20036

Jeffrey Dickstein, Esq.  
PHILLIPS & COHEN LLP  
Southeast Financial Center  
200 S. Biscayne Blvd, Suite 2790  
Miami, FL 33131

Andrew M. Stone, Esq.  
STONE LAW FIRM  
437 Grant Street, Suite 1806  
Pittsburgh, PA 15219

*Attorneys for Relator Jonathan D'Cunha, M.D.*

Robert J. Ridge, Esq.  
Allen M. Lopus, Esq.  
Bryon M. Chowka, Esq.  
CLARK HILL, PLC  
One Oxford Centre  
301 Grant Street, 14th Floor  
Pittsburgh, PA 15219

*Attorneys for Defendants the University of Pittsburgh Medical Center  
and University of Pittsburgh Physicians*

/s/ Adam Fischer  
ADAM FISCHER  
Assistant U.S. Attorney